

I. TO ADDRESS ARBITRAGE CONCERNS WITH THE ROUTING OF 8YY AND OTHER TYPES OF TRAFFIC, THE FCC SHOULD IMMEDIATELY ADOPT THE PROPOSED DIRECT CONNECT RULE.

- O1 supports Consolidated *et al.*'s proposal that all wireline and wireless carriers make direct connections available to requesting carriers that send or receive at least four (4) T-1s of originating and/or terminating traffic per month (or for IP networks or other modern technology, 200,000 monthly MOUs sustainable average over a 30-day period), **for all traffic—i.e., all local and long distance traffic along with all wholesale and retail traffic** (the “Four T1 Standard”), with a zero rate per MOU for all terminating traffic (“Direct Connect Rule”).¹
- O1 agrees that the Four T1 Standard is reasonable by industry standards.
- The Direct Connect Rule, if adopted, would help **stop harmful arbitrage schemes where direct connects are not made available**.
 - Requiring terminating carriers to make direct connections available would stop arbitrage schemes where terminating wireless carriers require traffic to be routed to them via their intermediate carrier partners that impose charges the wireless carriers cannot themselves impose.
- Adoption of the Direct Connect Rule would serve the public interest by promoting competition among intermediate carriers that, in turn, would:
 - Reduce costs of terminating traffic, improve service quality, and spur innovation
 - Promote network redundancy, which is essential to public safety and reducing network outages and service disruptions caused by traffic concentration

II. O1 HAS BEEN HARMED BY ARBITRAGE SCHEMES WHERE THE TERMINATING WIRELESS CARRIER DISCONNECTS O1'S EXISTING DIRECT CONNECTIONS AND FORCES O1 TO ROUTE TRAFFIC INDIRECTLY THROUGH THE WIRELESS CARRIER'S INTERMEDIATE CARRIER PARTNER(S).

- In late 2015 and early 2016, two national wireless carriers terminated their direct connections with O1—**direct connections that had been in place for years**—and required O1 to instead indirectly route traffic destined for such wireless carriers' end-users through their intermediate carrier partners.
- The disconnection of the direct connections forced O1 to pay the intermediate carrier partners' high transit rates, tariffed switched access rates, or inflated commercial rates.
- Upon information and belief, both wireless carriers benefit from the new, artificially created revenue streams their intermediate carrier partners receive as a result of the forced indirect routing.

¹ Letter from Philip Macres, Counsel for Consolidated Communications *et al.*, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90 & 07-135, CC Docket No. 01-92, at Attachment p.2 (filed Dec. 4, 2017) (“Consolidated *et al.* Dec. 4, 2017 *Ex Parte* Notice”).

A. AT&T Mobility Forced O1 to Inefficiently Route Terminating Traffic Indirectly through AT&T Mobility's Intermediate Carrier Partners at Rates AT&T Mobility Could Not Directly Charge.

- *Background.* Prior to AT&T Mobility disconnecting O1's direct connections, AT&T Mobility and O1 had been exchanging all traffic destined to each other's networks over direct connections at bill-and-keep.
 - AT&T Mobility demanded that O1 re-negotiate the direct connection agreement. Under the new agreement, instead of continuing to exchange all traffic – both intraMTA and interMTA – over the direct connections, O1 was required to route the interMTA traffic indirectly to AT&T Mobility through its long distance affiliate AT&T Corp. using its Voice Over IP Connect Service (“AVOICS”).
 - AT&T Mobility ultimately forced O1 to route calls inefficiently, although AT&T Mobility was “willing” to leave the direct connections connected only for the delivery of intraMTA traffic.
- Routing both interMTA and intraMTA traffic over the same direct connections is efficient and technically feasible; the only apparent basis for AT&T Mobility's new requirement was to create a new revenue stream in the routing of interMTA traffic.
- *Impact of indirect routing.* Requiring interMTA traffic to be routed through AT&T Corp. allowed it to set rates unilaterally and at unreasonable levels, as such rates are not subject to regulation or competition.
 - Since the disconnection of O1's direct connections, AT&T Corp.'s AVOICS rates have increased significantly. Consequently, O1 does not route traffic destined for AT&T Mobility's end-users through AT&T Corp's AVOICS.
 - Without direct connections to AT&T Mobility, O1's primary alternative route for delivering traffic to AT&T Mobility's end-users is through its ILEC affiliates at their transit or tariffed tandem switched access rates.
 - O1 had to purchase additional interconnection trunks from one of AT&T Mobility's ILEC affiliates to route calls destined to AT&T Mobility's end users.
 - Requiring O1 and the other carriers to route terminating traffic destined for AT&T Mobility's end-users through its ILEC affiliate generates millions of dollars of revenue for the ILEC that would not exist absent AT&T Mobility's refusal to allow O1 to send interMTA traffic over direct connections.
 - To the extent that any indirect routes to deliver traffic to AT&T Mobility's end-users are available through any non-affiliated carriers, such options are only available because AT&T Mobility is discriminating against O1 and many others to the advantage of a limited number of CLECs that AT&T Mobility has granted direct connections for interMTA traffic.
 - O1 is currently engaged in litigation with AT&T Mobility at the California Public Utilities Commission to address this discrimination.²

² See *O1 Communications, Inc. v. New Cingular Wireless PCS, LLC*, Docket No. C.15-12-020 (Cal. P.U.C.).

B. T-Mobile Terminated Direct Connections to O1, Forcing O1 to Inefficiently Route Terminating Traffic Indirectly through T-Mobile's Intermediate Carrier Partner at Rates T-Mobile Could Not Directly Charge.

- *Background.* For years, O1 and T-Mobile had direct connections in place and exchanged millions of minutes of all types of traffic at bill-and-keep.
- *T-Mobile's partnership with Inteliquent.* In August 2015, T-Mobile and Inteliquent (a third-party CLEC) publicly announced an agreement through which Inteliquent would generally serve as T-Mobile's "**sole** interconnection provider."³ That is, virtually all phone calls destined to T-Mobile's end users were to be routed from other carriers through Inteliquent.
 - The redacted agreement that O1 has reviewed regarding T-Mobile's arrangement with Inteliquent shows that T-Mobile receives "credits" against its bill to compensate it for most types of minutes of use that are routed through Inteliquent to T-Mobile's end users. In other words, T-Mobile is compensated for most types of calls terminated to its end users that Inteliquent routes to T-Mobile, a revenue stream that would not exist but for this arrangement.⁴
 - This arrangement **permits T-Mobile to financially benefit from a revenue stream that is not permitted under federal intercarrier compensation rules**, because wireless carriers are not permitted to charge for terminating traffic to their customers without an agreement with the calling party's carrier.
- Shortly after the announcement of T-Mobile's partnership with Inteliquent (and with only one day's notice to O1), T-Mobile disconnected its direct connections with O1, blocking all traffic so that calls from O1's customers (both wholesale and retail) to T-Mobile's end users could not be completed.
- *Impact of indirect routing requirement.* As a result of the disconnection, Inteliquent's rates to route traffic indirectly through it **increased by 400%. Inteliquent's rate increase skyrocketed O1's costs that were previously at bill-and-keep (i.e., 0) with T-Mobile.** In addition, **O1's customers experienced high rates of post dial delay and non-completion of their telephone calls** because the indirect routes available to get traffic from O1's customers to T-Mobile's end users did not have sufficient capacity to handle the sudden increase of traffic, which had previously been exchanged over direct connections.
 - Today, T-Mobile continues to force O1 to route traffic through indirect routes that ultimately include T-Mobile's artificially inserted intermediate carrier partner, i.e., Inteliquent, which charges unreasonably high rates for O1 to terminate traffic to T-Mobile's end users.

³ See Inteliquent Press Release, Inteliquent Announces Entry Into Breakthrough Agreement (dated Aug. 17, 2015) (emphasis added), available at <http://ir.inteliquent.com/releasedetail.cfm?releaseid=927943>; see also Letter from Ronald W. Del Sesto, Jr., Counsel to Inteliquent, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 05-25 *et al.*, at attached FCC Presentation p.5 (filed May 24, 2016).

⁴ See Letter from Philip J. Macres, Principal, Klein Law Group, PLLC, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90 & 07-135; CC Docket No. 01-92, at n.8 and Exhibit A, (filed Dec. 20, 2017).

III. THE FCC SHOULD IMMEDIATELY INTERCEDE AND ADOPT THE PROPOSED DIRECT CONNECT RULE.

A. The FCC Stated It Would “Intercede” If a CMRS provider “Refuses a Reasonable Request to Interconnect” to “Gain an Unfair Competitive Advantage.”

- In the 1995 proceeding on wireless interconnection, the FCC assured the industry that while it initially was not requiring wireless providers to directly interconnect with other carriers upon request, that it was **“ready to intercede in the event a CMRS provider refuses a reasonable request to interconnect,”** and that it would be **“particularly vigilant in policing, where they exist, any efforts by CMRS providers to deny interconnection in order to gain an unfair competitive advantage”** or the denial is otherwise “motivated by anticompetitive animus.”⁵
- The FCC observed that one situation that would warrant requiring wireless providers to directly interconnect would be where the wireless provider is affiliated with a LEC and the wireless provider refuses direct connection in order to maintain the revenue stream to the LEC associated with routing traffic between other carriers and the affiliated wireless provider. The FCC found that this would raise the competitors’ “costs of doing business and hence hinder competition.”⁶
 - The two examples addressed above with AT&T Mobility and T-Mobile represent the type of situation cited by the FCC that would warrant ordering wireless providers to directly interconnect with requesting wireline carriers.
 - While T-Mobile and Inteliquent are not corporate affiliates, the agreement between them for Inteliquent to be T-Mobile’s “sole interconnection provider” makes them affiliated in the context of partnering to route traffic from other carriers that is destined for T-Mobile’s customers and sharing the financial gain associated with intercepting such traffic.

B. The FCC Can Immediately Adopt the Direct Connect Rule Because It Already Issued an FNPRM on When and Who May Seek Section 251(a)(1) Direct Connects.

- The FCC may immediately adopt the proposed Direct Connect Rule pursuant to the Further Notice of Proposed Rulemaking associated with the *2011 USF/ICC Transformation Order*, which specifically asked:

Should the Commission interpret section 251(a)(1) to allow the carrier requesting interconnection to decide whether interconnection will be direct or indirect or should we otherwise formally designate one of the carriers as entitled to insist upon direct (rather than indirect) interconnection? If so, which carrier should be entitled to make that choice, and how would such a framework be implemented?⁷

⁵ *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, Second Notice of Proposed Rulemaking, 10 FCC Rcd 10666, ¶ 43 (1995).

⁶ *Id.*

⁷ *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, ¶ 1383 (2011) (“*2011 USF/ICC Transformation Order*”) (subsequent history omitted); *see also id.*, ¶¶ 833-842 (discussing the Commission’s direct and ancillary authority under Sections 201, 251(a)(1), 251(b)(5) and 332 to allow ILECs to request interconnection from a CMRS provider and to invoke the Section 252 negotiation and arbitration procedures to resolve disputes).